



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES, CALIFORNIA

Date:

APR 28 2008

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the
Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The District Director issued the applicant a Decision on Application for Waiver of Grounds of Inadmissibility denying the waiver application, but with an attachment related to a different individual. The matter will be remanded for the District Director to reissue the decision on the waiver application explaining the reasons for the decision and to adjudicate a motion to reopen the applicant's application for adjustment of status, which was denied for lack of prosecution.

The applicant is a native and citizen of Mexico who last entered the United States without inspection on a date variously indicated as December 1995, December 2000, and January 2001. Counsel states that the applicant first entered the United States in 1989, was deported in December 1995, and reentered the United States a few days later in December 1995. *Motion to Reopen – Application to Adjust Status*, at 3 and 4. The applicant's spouse and the applicant himself indicated on Forms I-130 and I-485 that he last entered the United States in December 2000. The applicant indicated on his Biographic Information Form G-325A that he has lived and worked in the United States since January 2001. If the applicant's assertions are correct, then he is inadmissible under section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more.

The applicant filed an application for adjustment of status on August 1, 2003 based on an approved Petition for Alien Relative filed by his U.S. citizen spouse. On December 4, 2003, the applicant, through his former counsel, submitted Form I-212, Application for Permission to Reapply for Admission after Deportation or Removal, and Form I-601, Application for Waiver of Grounds of Inadmissibility. The grounds of inadmissibility listed on Form I-601 are "domestic violence" and "voluntary departure." A review of the record indicates that the applicant has not to date been found by U.S. Citizenship and Immigration Services (CIS) to be inadmissible to the United States, though it appears the applicant may be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, making a criminal threat. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182 (h), in order to remain in the United States with his U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director* dated July 11, 2005. A copy of the decision in the applicant's file contains an attachment with the applicant's name, but referring to a waiver application filed under section 212(i) of the Act, 8 U.S.C. § 1182(i), for having committed fraud or misrepresentation of a material fact. The decision states that the applicant did not submit an affidavit explaining why his family would suffer extreme hardship if he were not allowed to remain in the United States, and therefore he failed to establish extreme hardship to a qualifying spouse or parent.

On appeal, counsel states that the decision received by the applicant denying his waiver application does not relate to the applicant, and requests that CIS verify the exact reasons for the denial of the application. Counsel submitted a copy of the denial notice, which contains an attachment with the name [REDACTED]. The facts and evidence described in the decision also do not appear to relate to the applicant. Counsel also submitted a motion to reopen in response to a decision denying the applicant's application for adjustment of status issued on July 11, 2005. The application was denied because the applicant failed to appear at his interview at the CIS District Office in Los Angeles on June 10, 2005. Counsel asserts that the applicant timely requested that this interview be rescheduled so that he could gather the necessary documentation for the interview. This assertion is

supported by documentation on the record, which establishes that the request was received by the Los Angeles District Office on June 6, 2005. *See applicant's request to reschedule I-485 interview* dated June 4, 2005 and stamped received by CIS on June 6, 2005.

In this case, the record reflects that the applicant timely requested that his adjustment of status interview be rescheduled. Despite this request, this application was denied on July 11, 2005 because the applicant failed to appear at the interview. A motion to reopen was filed at the same time the appeal of the denial of the waiver application was filed. No decision on the motion to reopen was issued before the matter was forwarded to the AAO to adjudicate the appeal. Further, as stated by counsel in the notice of appeal, the denial of the waiver application was mistakenly sent to the applicant with an explanation related to another individual.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. However, although the waiver application was filed by the applicant with the assistance of his former counsel, a review of the record establishes that the applicant has not been found by CIS to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Further, the record of proceedings contains a letter denying the applicant's waiver application dated July 11, 2005 and marked as "file copy." This letter contains the applicant's name and appears to relate to him, though it refers to a waiver under section 212(i) of the Act, and states that the applicant did not submit an affidavit explaining the extreme hardship his family would experience. As the record contains two different versions of the denial letter, both containing information not relating to the applicant, the AAO cannot be certain if the reason given in the letter marked "file copy" was the true basis for denial of the applicant's waiver application. Accordingly, the matter will be remanded to the district director for the following actions to be taken: 1) adjudicate the motion to reopen the application for adjustment of status; 2) determine which grounds of inadmissibility, if any, apply to the applicant; and 3) if a waiver of inadmissibility is required, review the evidence on the record and issue a new decision concerning the waiver application.

ORDER: The matter is remanded to the district director for further action as described above.